



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2009-0648; FRL-9936-86-Region 6]

Approval and Promulgation of Implementation Plans; New Mexico; Nonattainment New Source Review Permitting State Implementation Plan Revisions for the City of Albuquerque-Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the New Mexico State Implementation Plan (SIP) for the City of Albuquerque-Bernalillo County. These revisions provide updates to the City of Albuquerque-Bernalillo County major Nonattainment New Source Review (NNSR) permit program. The EPA is proposing this action under section 110 and part D of the Clean Air Act (CAA or the Act).

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2009-0648. All documents in the docket are listed on the <http://www.regulations.gov>

Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Ms. Erica Le Doux, (214) 665-7265, ledoux.ERICA@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

The background for today’s action is discussed in detail in our August 27, 2015 proposal (80 FR 52003). In that notice, we proposed to approve updates to the New Mexico SIP for the City of Albuquerque-Bernalillo County Nonattainment New Source Review (NNSR) permitting program at 20.11.60 NMAC as submitted on August 16, 2010 and July 26, 2013. These revisions were submitted to address the following federal requirements for NNSR:

- Implementation of the NSR Program for PM_{2.5} (73 FR 28321);
- PSD for PM_{2.5}-Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC) (75 FR 64864);

- Implementation of the 8-hour Ozone (O₃) NAAQS-Phase ; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to NSR and PSD as They Apply to Carbon Monoxide (CO), PM and O₃ NAAQS (70 FR 71612);
- PSD and NNSR: Reasonable Possibility in Recordkeeping (72 FR 72607); and
PSD and NNSR: Reconsideration of Inclusion of Fugitive Rule (76 FR 17548).

We did not receive any comments regarding our proposal.

II. Final Action

We are approving severable portions of SIP submittals for the New Mexico SIP for the City of Albuquerque-Bernalillo County NNSR permitting program submitted on August 16, 2010, and July 26, 2013. The EPA has determined that the submitted rules were adopted and submitted in accordance with the CAA and are consistent with our regulations and policies regarding NNSR permitting. Therefore, we are taking final action under section 110 and part D of the CAA to approve the following as revisions to the New Mexico SIP for the City of Albuquerque-Bernalillo County:

- Revisions to 20.11.60.1 NMAC as adopted on July 14, 2010 and submitted on August 16, 2010;
- Revisions to 20.11.60.2 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;
- Revisions to 20.11.60.6 NMAC as adopted on July 14, 2010 and submitted August 16, 2010, and adopted on April 10, 2013 and submitted on July 26, 2013;
- Revisions to 20.11.60.7 NMAC as adopted on July 14, 2010 and submitted August 16, 2010, and adopted on April 10, 2013 and submitted on July 26, 2013;

- Revisions to 20.11.60.12 NMAC as adopted on July 14, 2010 and submitted August 16, 2010, and adopted on April 10, 2013 and submitted on July 26, 2013;
- Revisions to 20.11.60.13 NMAC as adopted on July 14, 2010 and submitted August 16, 2010, and adopted on April 10, 2013 and submitted on July 26, 2013;
- New 20.11.60.14 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;
- New 20.11.60.15 NMAC as adopted July 14, 2010 and submitted August 16, 2010, and revisions adopted on April 10, 2013 and submitted on July 26, 2013;
- New 20.11.60.16 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;
- Revisions to 20.11.60.17 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;
- Revisions to 20.11.60.18 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;
- New 20.11.60.19 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;
- New 20.11.60.20 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;
- Revisions to 20.11.60.21 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;
- Revisions to 20.11.60.22 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;
- Revisions to 20.11.60.23 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;
- Revisions to 20.11.60.24 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;

- Revisions to 20.11.60.25 NMAC as adopted on July 14, 2010 and submitted August 16, 2010;
- Revisions to 20.11.60.26 NMAC as adopted on July 14, 2010 and submitted August 16, 2010; and
- Revisions to 20.11.60.27 NMAC as adopted on July 14, 2010 and submitted August 16, 2010.

The EPA finds that the August 16, 2010 and July 26, 2013, submittals together address all required NNSR elements for the implementation of the 8-hour ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS. We note that the City of Albuquerque-Bernalillo County NNSR program does not include regulation of VOCs and ammonia as PM_{2.5} precursors. However, section 189(e) of the Act requires regulation of PM_{2.5} precursors that significantly contribute to PM_{2.5} levels “which exceed the standard in the area” and PM_{2.5} levels in the City of Albuquerque-Bernalillo County do not currently exceed the standard. In the event that an area is designated nonattainment for the 2012 PM_{2.5} NAAQS or any other future PM_{2.5} NAAQS, New Mexico for the City of Albuquerque-Bernalillo County will have a deadline under section 189(a)(2) of the CAA to make a submission addressing the statutory requirements as to that area, including the requirements in section 189(e) that apply to the regulation of PM_{2.5} precursors.

III. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the New Mexico for the City of Albuquerque-Bernalillo County regulations as described in the Final Action section above. We have made, and will continue to make, these

documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 29, 2015.

Ron Curry,
Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG – New Mexico

2. In §52.1620(c) the second table titled “EPA Approved Albuquerque/Bernalillo County, NM Regulations” is amended by revising the entry for “Part 60 (20.11.60)” to read as follows:

§52.1620 Identification of plan

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(c) * * *

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
New Mexico Administrative Code (NMAC) Title 20- Environment Protection, Chapter 11 – Albuquerque/Bernalillo County Air Quality Board				
* * * * *				
Part 60 (20.11.60)	Permitting in Nonattainment Areas	4/10/2013	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
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